No. 21719, 21719A, 21719B, 21719C, 21719D

In the
United States Court of Appeals
for the Ninth Circuit

JOHN A. CROSS, et al., *Appellants,* vs. S.S. KAIMANA, her engines, etc., et al., *Appellees.*	No. 21719
JOHN A. CROSS, et al., *Appellants,* vs. S.S. LANAKILA, her engines, etc., et al., *Appellees.*	No. 21719A
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JOHN A. CROSS, et al., *Appellants,* vs. S.S. COAST PROGRESS, her engines, etc., et al. *Appellees.*	No. 21719D

Brief of Appellants

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Brief of Appellants

STATEMENT AS TO JURISDICTION

The district court had jurisdiction over the parties and the subject matter of these actions pursuant to Article III,

Section 2 of the United States Constitution, 28 U.S.C. § 1333(1) (vesting district courts with jurisdiction to hear admiralty actions), and Rules of Practice in Admiralty and Maritime Cases, Rule 13; and in the case of Appeal No. 21719 pursuant to 46 U.S.C. § 951 (vesting jurisdiction in the district courts over actions to foreclose a preferred ship mortgage). No. 21719 - C.T. 1:23-25, 4:28-30; No. 21719A - C.T. 577:15-22, 578:30-31; No. 21719B - C.T. 668:S-14, 669:20-22; No. 21719C - C.T. 718:8-14, 719:20-22; No. 21719D - C.T. 767:S-14, 768:19-21.[1]

Appellate jurisdiction is conferred on this Court by 28 U.S.C. § 1291 (No. 21719 - C.T. 544-546; No. 21719A - C.T. 656-658; No. 21719B - C.T. 708-709; No. 21719C - C.T. 757-758; No. 21719D - C.T. 898-899).

STATEMENT OF THE CASE

This proceeding involves appeals from final judgments entered in five libels *in rem* that were consolidated for trial in the court below. The five appeals have heretofore been consolidated by order of this Court.

Some of the pertinent facts appear in the Stipulation as to Certain Facts and Other Matters on file in 21719 (C.T. 273-291) and the Supplemental Stipulation of Fact con-

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1. We shall refer herein to the cases by the numbers given in this Court. The vessels, the district court case number and the appellate court numbers are as follows:

	District Court	Appellate Court
Kaimana (Philippine Bear)	28019	21719
Lanakila (Indian Bear)	28026	21719A
Alaska Bear	28094	21719B
Pacific Bear (Lanakai)	28107	21719C
Coast Progress	28223	21719D

tained in the Pre-trial Order in No. 21719 (C.T. 303:11-305:28). The balance of the facts appear from testimony, depositions and documentary evidence adduced at the oral proceedings. There is no real dispute as to the pertinent facts.

The appellants are trusts, whose beneficiaries are seamen.

The libels before this Court involve claims for wages of crew members of vessels who are beneficiaries of trusts that exist as conduits of deferred compensation to such licensed officers and unlicensed seafarers (seamen herein). The appellants are the trustees of fifteen trusts established by collective bargaining between Pacific Maritime Association (herein PMA) and the several unions representing crew members on American Flag vessels sailing out of California, Oregon and Washington ports. Four of the trusts (MMP-PMA Vacation Plan, MEBA-PMA Vacation Plan, ARA-PMA Vacation Plan and SIU Pacific District-PMA Supplemental Benefits Plan) provide vacation pay; four of them (MMP-PMA Pension Plan, MEBA-PMA Pension Plan, ARA-PMA Pension Plan, and SIU Pacific District-PMA Pension Plan) provide pensions; and seven of them (MMP-PMA Welfare Plan, MEBA-PMA Welfare Plan, ARA-PMA Welfare Plan, MSO-PMA Welfare Plan, SUP-PMA Welfare Plan, MFOW-PMA Welfare Plan, and MCS-AFL-PMA Welfare Plan) provide welfare coverage (with benefits in the forms of sickness, accident and disability compensation, medical and hospital care for seamen and their dependents, recreation and educational facilities, etc.). (C.T. 275:19-30).

The appellees include five vessels.

The five libels were filed *in rem* against five vessels. Pacific Far East Line (herein PFEL) and the United States represent the vessel interests.

Four of the vessel appellees were part of the PFEL fleet before being operated by Coastwise Line (herein Coastwise) and Dorama, Inc. (herein Dorama) and were later reacquired by PFEL. These are the Kaimana, known as the Philippine Bear while in PFEL service, the Lanakila, known as the Indian Bear while in PFEL service, the Lanakai, known as the Pacific Bear while in PFEL service, and the Alaska Bear. During March, April and May of 1957, PFEL sold these four vessels in order to obtain cash to enable it to discharge the obligation to acquire replacement vessels that it has under its subsidy contract with the United States (cf. 46 U.S.C. §§ 1111-1182). PFEL took back a preferred mortgage on each to secure the portion of the purchase price not paid at the time of the sale. With full knowledge of PFEL, the four vessels so mortgaged were thereafter bareboat chartered from this purchaser. Pursuant to such charters and with full knowledge of PFEL, each of the four was operated by Coastwise in its fleet. Similarly, with full knowledge of PFEL, three of them were chartered to Dorama and operated by it in its fleet. (C.T. 304:1-20).

The Kaimana, the Lanakila and the Lanakai were operated, first by Coastwise and later by Dorama, in the California-Hawaii trade until February, 1960 (C.T. 290:31-291:8). Thereafter, "preferred ship mortgages" on the Kaimana and the Lanakila were duly foreclosed by PFEL in proceedings below (C.T. 304:21-23). Appellees contend that these ship mortgages were valid liens against the vessels

and that the claims here at issue are not secured by a maritime lien (C.T. 295:15-23). PFEL continued to have a ship mortgage on the Lanakai while it was operated under bareboat charter by Coastwise and Dorama; however, PFEL repurchased the Lanakai from the buyer in February, 1960, after Dorama ceased operations (C.T. 304:21-23). As owner of the vessel, PFEL asserts that there is no lien against the vessel with respect to the claims here at issue.

Only one voyage of the Alaska Bear is involved in this proceeding. This was an offshore round voyage between February 1, 1959 and April 19, 1959 (C.T. 304:1-14). It had been repurchased by PFEL prior to this voyage and was bareboat chartered by PFEL to Coastwise for the voyage. The written articles are an exhibit in the proceeding Vessels' Ex. 2-A). As owner of this vessel, PFEL resists the claims as to the deferred compensation on the ground that they are not secured by a lien against the vessel.

The Coast Progress was formerly owned by the United States. It sold the Coast Progress to one operator, from whom Coastwise subsequently acquired it prior to the period here relevant. By agreement with the United States, Coastwise assumed the liabilities and obligations of the previous owner under the ship mortgage, and with full knowledge of the United States, it operated this vessel in the coastwise trade along the Pacific Coast of the United States. After the libel was filed, a libel in intervention was filed by the United States as mortgagee and assignee of preferred ship mortgages. It resists the claims at issue here on the grounds that it has valid liens against the ship and that the claims here at issue do not have the security of a maritime lien (C.T. 295:20-23; 304:24-305:9).

Libels were filed to enforce the lien for wages of the crew of the vessel.

Three of the appeals - 21719B (Alaska Bear), 21719C (Pacific Bear, formerly Lanakai), and 21719D (Coast Progress) - relate to cases begun by the trustees to enforce the historic maritime lien for wages of the crew of the vessel, which is a preferred maritime lien under 46 U.S.C. § 953. They were to collect the agreed value of the vacation pay, pensions and welfare benefit coverage payable for maritime services performed on each of the vessels by members of her crew (C.T. 666-697; 716-746; 765-798). The details as to this compensation were specified in collective bargaining contracts under which members of the crew performed their maritime services (C.T. 287:21-24; Ves. Ex. 2). These trustees intervened for the same purpose in the *in rem* admiralty proceeding involved in 21719 (Kaimana), which was instituted by Long Island Tankers Corporation to foreclose a preferred mortgage[2] (C.T. 61-100). Similarly, they intervened for the same purpose in the *in rem* admiralty proceeding involved in 21719A (Lanakila), which was instituted by Todd Shipyard Corporation to recover for ship repair and other services furnished the Lanakila[3] (C.T. 575-613). PFEL and the United States provided bonds to release the vessels. At this time only

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2. At the time of the filing of the libels Long Island Tankers Corporation was a wholly-owned subsidiary of Pacific Far East Line, Inc. (herein PFEL). In July, 1961 the former was merged into PFEL and the latter succeeded to all of its rights and assumed its obligations. Accordingly, for the sake of simplicity the designation "PFEL" as hereinafter used refers to both companies collectively as one and the same entity unless a differentiation is expressly made (C.T. 276:28-277:6).

3. Pursuant to stipulation the libel of Todd Shipyard Corporation was dismissed on July 1, 1960 (C.T. 646-647).

these two parties, the vessels and the trusts remain involved in this litigation.

In each of the five admiralty actions the District Court for the Northern District of California, Judge Sweigert sitting, held that the deferred compensation claims presented are not secured by the maritime lien for wages of the crew of the vessel. On this ground, the court below entered judgment dismissing the trustees' actions on the merits (C.T. 544-546; 656-658; 708-709; 757-758; 898-899). From each of these judgments the trustees have appealed (C.T. 547; 659; 710; 759; 900). The issue on these appeals is whether this lien is security for these claims.

The seaman's employment contract sets out the many wage elements of the consideration for his performance of maritime services.

The various items of compensation payable to seamen for their performance of maritime services aboard a vessel are specified - with some duplications - in a number of sources. One source is the shipping articles specified in 46 U.S.C. §§ 564, 713 Schedule A, or the other "sign-on" document where the statutory form of articles is not required (cf. 46 U.S.C. § 574). Other terms are in statutory provisions and customs. Terms from these sources and from the collective bargaining agreement make up the seaman's contract of employment (C.T. 287:11-24, 303:11-17; Trustees' Exs. 9 and 10).

The articles actually signed by the seaman are only a small part of the contract of employment under which he performs maritime services. As to compensation, the articles specify only the basic monthly wage paid to the seamen and set out archaic standard terms with respect to the food and other provisions to be carried and provided by

the vessel, as specified in 46 U.S.C. § 713 Schedule A. Even as to the food and lodging portions of his compensation, the seaman gets what is called for under the collective bargaining contracts, not what is called for by the articles. With respect to one voyage of one of the vessels here involved, the Alaska Bear, the execution of seamen's articles was required by law and the seamen were signed on by duly executing articles before the Shipping Commissioner (Vessels' Ex. 2-A). All other voyages of this ship and all voyages of the other four ships were in the coastwise trade between California and Hawaii (C.T. 303:22-25), or in coastwise trade along the Pacific Coast in the case of the Coast Progress (C.T. 305:1-3). As to these operations, a written document specifying the length of the voyage is all that is required by statute. (C.T. 290:31-291:3; also see 46 U.S.C. § 574).

The full terms of compensation for performing maritime services are provided in the collective bargaining agreement. The forms of this compensation include base wages, overtime pay, penalty time pay, penalty cargo pay, extra pay to non-watch standing crew members, extra pay in lieu of the time off, cash for subsistence should the ship be unable to provide the required meals, cash for lodging ashore should the ship be unable to provide the required lodging, transportation to the place of original sign-on, maintenance and cure, supplementary pay for serving meals to others than regular crew members and passengers, etc. The agreement furthermore sets out the applicable terms (for the individual's contract) covering the extra pay in case the vessel be ordered into war areas, the wages to be paid in case of detention should the vessel be captured by an enemy, and repatriation should the seamen be required to leave the vessel in a foreign port. Supplements to each

basic collective bargaining agreement specify the deferred compensation the crew member receives in the form of vacation pay, pensions and welfare coverage.[4]

These collective bargaining agreements are negotiated by PMA, for the employers, with seven unions representing 21,000 to 22,000 seamen.[5]

The allocation of the seaman's wage dollar to the many forms of his compensation has been negotiated on a "wage package" basis.

Over the years, seamen have negotiated higher wages for their services through collective bargaining (C.T. 288: 15-17). The record shows the procedure. Shortly prior to the expiration of a current contract, their unions present

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4. The elements of the seamen's wages are listed in a government bulletin printed at pp. 6-10 of the Appendix to this brief.

5. PMA is a corporation composed of steamship operators and contract stevedoring concerns active in California, Oregon and Washington. PMA acts as agent for its steamship company members in negotiating with the labor unions referred to hereinbelow (C.T. 274:25-30). PMA represents substantially all of the major American Flag steamship companies operating out of the Pacific Coast ports, including PFEL (R.T. 70:15-17; Vessels' Ex. 2 p. 1).

Seven unions represent these seamen: International Organization of Masters, Mates & Pilots, West Coast Local 90 (herein MMP); Marine Engineers' Beneficial Association, Pacific Coast District (herein MEBA); American Radio Association (herein ARA); Marine Staff Officers' Union (herein MSO); and Seafarers' International Union of North America, Pacific District (herein SIU-PD), comprised of the Sailors' Union of the Pacific (herein SUP), and Marine Firemen's, Oilers' and Watertenders' Union (herein MFOW), and the Marine Cooks and Stewards Union-AFL (herein MCS). Licensed masters, mates and pilots employed on such vessels are covered by MMP. Licensed engineer officers on such vessels are covered by MEBA. Licensed radio officers are covered by ARA. Marine staff officers are covered by MSO (C.T. 274:31-275:16). SIU-PD is the certified collective bargaining agent for unlicensed seamen employed on vessels operating out of West Coast ports. Unlicensed seamen working in the deck department of such vessels are covered by SUP. Unlicensed seamen employed in the engine department of such vessels are covered by MFOW. Cooks and stewards and similar personnel, unlicensed, are covered by MCS.

the seamen's demands. These normally include demands for increases in basic wages, increases in other cash wage items, changes in working rules, establishment of or increases in vacation pay, pensions, welfare benefit coverage, etc. (R.T. 73:24-75:9). These demands are analyzed by employer representatives to determine how much each of them would represent as part of the wage costs of the vessels. Through negotiation, agreement between the seamen and their employers is reached on a total "wage package" cost. The union and the PMA then fit the various items into the agreed total cost (R.T. 75:10-76:5; C.T. 288:11-14).

In recent years agreement has first been reached on an overall "wage package" increase and thereafter the union has had the option to select the items to which the agreed wage increase would be applied (R.T. 76:14-23). At times a union would take nothing in increased basic wages but would apply the entire increase to one or more of the other items of compensation such as overtime pay, penalty pay, vacation pay, pensions and welfare. At other times a union would allocate a portion of the increase to basic wages, another portion to more vacation pay, another to increased pension, and another to improved welfare benefits (R.T. 76:24-77:4). Even where two or more unions negotiate the same "wage package" increase, they frequently have allocated it differently among the various items (R.T. 91:19-92:2; 96:18-97:17). This "wage package" bargaining has been the pattern of bargaining in the industry since 1951 R.T. 77:4-8; and generally R.T. 71-99). A government study of the history and results is in evidence (See Ex. 2 to Trustees' Ex. 1; R.T. 50-56).

Through this bargaining the seamen have received an ever-increasing portion of their overall wages in vacation

pay, pensions and welfare benefits (C.T. 287:29-32). In 1960 the total annual payments for these forms of deferred compensation by PMA employers was $12,799,978.00 (Trustees' Ex. 6). This portion of the "wage package" represents close to 20% of the vessel's payroll cost (R.T. 81:2-6).

Wages of crew members are paid at various times and in a variety of forms.

The procedures under which compensation is paid to the seamen seem complex to those not familiar with the ways of the sea. Seamen normally have substantial portions of their compensation paid to dependents, if they have any, through allotments from their wages (see Vessels Ex. 2-A). Similarly, by such allotments, the seaman can have portions of his wages paid into a bank account or savings account. This pay goes directly to the beneficiary or account, from time to time while the voyage carries on, without passing through the hands of the seaman himself (46 U.S.C. § 599). During the course of the voyage, the seaman normally takes a portion of his compensation currently by the purchase of articles from the vessel's slop chest, the price thereof being deducted from his cash wages (46 U.S.C. § 670). He also normally take a portion of his earned cash wages at ports of call from time to time during the voyage (46 U.S.C. § 597). At the conclusion of the voyage he will collect immediately the remaining amount of his undisputed base cash wages.[6] Portions of his overtime and penalty pay, etc., may be deferred until grievances with respect to these matters are resolved through regular processes of labor relations; cash payments in lieu of subsistence or lodging may be actually paid at the time the voyage is concluded or

6. The time for payment of this portion of the wages is covered by 46 U.S.C. §§ 591-604, 641-644.

later on, particularly if there is a grievance (46 U.S.C.A. § 596, note 44). Compensation in the form of board and lodging, when provided in kind, is received on a regular day to day basis (cf. 46 U.S.C. §§ 660-1, 661-665, 713 Schedule A). Other items, such as repatriation, subsistence ashore away from the vessel, transportation and expenses in case of repatriation or other return to a home port, are usually paid either at the end of the voyage or at the time the facts calling for their payment occur (cf. 46 U.S.C. §§ 678, 679, 684, 685). A seaman who becomes sick or injured in the service of the vessel is entitled to maintenance (food and lodging) and cure (drug and medical expenses and hospital care) after he has left the ship while sick or injured. See 1 *Benedict, Admiralty* § 84 (6th ed. 1940).

Another substantial portion of the seaman's compensation is "received" by him as a consequence of withholding provisions of statutes and contracts. These prescribe that portions of his cash wages shall be withheld at the source. The employer has the obligation to transmit these sums to the federal government for income tax and social security tax purposes, to the State of California for unemployment disability coverage, and to the welfare plans that include provisions for contributions taken as deductions from wages otherwise specified as being payable to the seaman. The deduction and forwarding of such an amount constitutes payment of this portion of the compensation. So, too, is the deduction and forwarding of money to satisfy a court order requiring that part of a seaman's wages be paid for the support and maintenance of his wife and minor children (See 46 U.S.C. § 601).

The compensation involved in these appeals is deferred, like several of the items described above. Vacation pay is collected by the seaman at the time he wants this money

from his vacation plan. His pension is collected only after retirement and through his pension trust. His welfare benefits coverage is provided automatically, beginning when he becomes eligible for such coverage under the terms of his welfare plan. This coverage may continue for a period following his last day of employment (Vessels' Ex. 2).

The trusts are the conduits through which seamen are provided and collect their vacation pay, pensions and welfare.

The uniform practice in the employment of Pacific Coast seamen on American Flag dry cargo vessels is: (1) the crew member works under an employment contract that requires that he be provided vacation pay, pensions and welfare benefits, (2) the vacation pay, pensions and welfare benefits are provided through trusts established and existing on a multi-employer basis, (3) each ship operator is obligated to pay specified amounts into such trusts for each day that maritime services are rendered by each seaman, and (4) the trusts disburse therefrom the vacation pay, pensions, and welfare benefits to the individual seamen (C.T. 303:11-21).

These multi-employer—multi-seamen trusts exist to provide vacation pay, pensions and welfare benefit coverage so as to give the seamen the largest benefit for the portion of their wage package they assign to these wages. These plans take advantage of the cost savings involved in handling the deferred compensation payments on the basis of large groups of men, rather than on individual or small group arrangements. They also take advantage of the tax laws, which permit the employer's wage dollar to be paid into the plans without payment of any tax thereon by any seaman and which permit the plans to accumulate earnings on the trust fund during the period between the time the work

is actually done and the time the deferred compensation is picked up in cash, again without any payment of tax on these earnings as they are accumulated.

The trusts have provided the deferred compensation due for the maritme services to the appellee vessels.

The seamen on the five libeled vessels received the deferred wages they earned by the performance of their maritime services on these vessels (C.T. 538:20-26). The multi-employer—multi-seaman plans have paid all vacation pay, pensions, and welfare benefits claimed prior to the date of trial in the district court by seamen who served on the appellee vessels and made such a claim (C.T. 285:4-31). In no instance prior to the trial had an individual beneficiary of any of the trusts here involved been denied a benefit because of the fact that the particular sums sought to be recovered by the trustees in the present suits were not paid into the trust (C.T. 285:32-286:3).

The deferred compensation has been reduced to money.

The terms of the employment contract specified the amount and the form of payment to be made by the ship operator to provide the agreed deferred compensation. The amounts that the employer was obliged to pay have been called "contributions" (See Vessels' Ex. 2 and App. to this brief, 11-22). As we shall explain more fully below, the seaman accrues a right to a quantum of deferred compensation day by day as he performs maritime services, and this daily accumulation has a value equal to the "contribution" due from the employer. The present value - as of the date that the maritime services are performed - of the cash that the seaman will eventually collect, at the time and under the conditions agreed upon, also equals the "contribution"

due. The trust documents, agreed to by the ship operator and the seaman, establish the mathematical equivalence of these values in money (See Vessels' Ex. 2). Accordingly, the amounts due to provide the agreed vacation pay, pensions, and welfare benefit coverage to the seaman who performed services on the libeled vessels are:

Trust	Balance due ex Kaimana, Lanakila, Pacific Bear and Alaska Bear	Balance due ex Coast Progress
MMP-PMA Vacation Plan	$12,903.40	$ 7,446.50
MMP-PMA Pension Plan	6,282.25	3,849.24
MMP-PMA Welfare Plan	1,744.37	572.97
MEBA-PMA Vacation Plan	29,439.25	10,436.00
MEBA-PMA Pension Plan	14,449.46	5,217.17
MEBA-PMA Welfare Plan	2,587.22	807.29
ARA-PMA Vacation Plan	4,041.65	1,368.10
ARA-PMA Pension Plan	1,764.90	694.10
ARA-PMA Welfare Plan	411.45	128.05
SIU-Pacific District-PMA Supplemental Benefits Plan	55,893.20	18,302.90
SIU-Pacific District-PMA Pension Plan	27,063.56	8,682.82
MSO-PMA Welfare Plan	1,066.20	271.20
SUP-PMA Welfare Plan	11,819.75	4,035.75
MFOW-PMA Welfare Plan	9,168.75	3,182.25
MCS-AFL-PMA Welfare Plan	9,602.69	2,777.79

The amounts are conceded to be valid obligations of Coastwise and Dorama to the respective trusts (C.T. 276:9-13). However, neither company now has any assets (C.T. 533: 18-23).

SUMMARY OF ARGUMENT

Members of the crews of five vessels performed maritime services over the period of about one year. The ship operator, in each case, failed to make the agreed payments to provide the vacation pay, pensions and welfare benefit coverage that were part of the agreed consideration for the services. The trusts set up by the seamen as the conduits for collecting these three types of deferred compensation provided it to the crew members. These trusts, appellants here,

thereafter filed libels *in rem* against each of the five vessels appellees here, to enforce the usual security, the lien for wages of members of the crew of the vessel. The district court refused to enforce the lien, permitting the vessel's owner or mortgagee to hold its interest in the vessel despite the failure of the vessel's operator to provide the agreed compensation to the crew members.

The standard admiralty law applicable is simple and well founded. The lien for wages of the crew of the vessel is security for all types of compensation. It is enforced, without regard to the form of the compensation, where it is shown (1) that maritime services were performed and (2) that the agreed compensation not paid by the vessel's operator can be reduced to money. Furthermore, the lien has been enforced, with uniform consistency, in suits instituted by the successor to the seamen's claims, that is whoever has provided the agreed compensation to the crew members, as readily as in suits by the individual seaman.

The district court erred in failing to follow this body of admiralty law and in following an erroneous decision of the Fifth Circuit. It did not find that either of the two ultimate facts establishing the lien was absent. It refused to follow the reasoning of the Fifth Circuit. It apparently was misled by the facts that American seamen have chosen to allot part of their "wage package" to these types of compensation prior to the impact of taxes and to collect this compensation through trusts, rather than by personal demand on the vessel's operator. They did so in order to have a safe and convenient way to collect the compensation when it is payable and to get, at that time, the most cash for the money they allot out of their "wage package" for this purpose. These facts do not justify the judgment below unless the long established admiralty law principles as to the lien for the crew members' compensation are reversed.

ARGUMENT

I. The lien for wages of the crew of the vessel, which outranks the lien relied on by appellees, makes the vessel security for the obligation to provide vacation pay, pensions and welfare benefit coverage to the members of its crew.

The lien for wages of the crew of the vessel is a development of admiralty jurisdiction with a long history. The lien makes the vessel security for the obligation to pay the wages of the crew of the vessel. In the appeals before this Court, federal jurisdiction exists because these actions are based upon the performance of maritime services by members of the crew of each of the vessels. The libels *in rem* were instituted to enforce the lien securing payment of the deferred compensation elements of the wages provided in the employment contracts under which this maritime service was performed.

(a) Admiralty jurisdiction extends to all claims for compensation for the performance of maritime services.

It is elementary that admiralty jurisdiction embraces claims for the agreed compensation of seamen for the performance of maritime services. The landmark case is *Harden v. Gordon,* 2 Mason 541, 11 Fed. Cas. 480 (Case No. 6,047, Circuit Court, Me. 1823). There a seaman sued for his expense in the cure of a sickness. The court held that he had a right "to be healed at the expense of the ship". Mr. Justice Story, after reviewing in great detail the history of the admiralty jurisdiction in a multitude of seafaring nations, states:

> "... [T]he claim for such expense may be enforced in the court of admiralty. It constitutes, in contemplation of law, a part of the contract for wages, and is a material ingredient in the compensation for the labour and services of the seamen. The admiralty has a rightful jurisdiction over the subject of compensation of

seamen for maritime services, in whatever manner or form that compensation is to be paid, if it can be reduced to money." (11 Fed. Cas. 480, at 481)

(b) The historical priority of the lien for wages of the crew of the vessel was preserved by the 1920 statute giving rank to the "preferred ship mortgage", the lien relied on by appellees.

Characteristic of admiralty jurisdiction are proceedings *in rem* against vessels. In order to make it possible to operate vessels in the course of foreign trade, numerous liens have been developed as part of the general admiralty law of nations. These liens arise without any participation of those having ownership interests in the vessel, for they arise from the operation of the ship not from contract. The priority of the lien for wages over all other claims, has long been accepted.

The rules as to priority of maritime liens have developed over many years of litigation. The general rule is that maritime liens rank in an order inverse to the order of their creation. *The St. Jago de Cuba,* 9 Wheat. 409 (22 U.S. 1824). Maritime liens are also ranked on the basis of their nature. In 1927 it was said that the following general statement as to order of priority, existing irrespective of time, was then in accord with the weight of authority:

> "(1) Seamen's wages; (2) salvage; (3) tort and collision liens; (4) repairs, supplies, towage, wharfage, pilotage, and other necessaries; (5) bottomry bonds in inverse order of application; (6) nonmaritime claims." *The William Leishear,* 21 F.2d 862, 863 (D. Md. 1927)

The primary rank of the lien for seamen's wages was clear in 1811, when the High Court of Admiralty stated in *The Madonna D'Idra,* 1 Dods. 37, 40, 165 Eng. Rep. 1224, 1225:[7]

> "Now, it must be taken as the universal law of this Court, that mariners' wages take precedence of bot-

7. This opinion is printed in the appendix hereto.

> tomry bonds. These are sacred liens, and, as long as a plank remains, the sailor is entitled, against all other persons, to the proceeds as a security for his wages. This is a principle universally admitted; and whoever enters into a contract, or advances money upon bottomry, must be presumed to do it with a full knowledge of the law upon this point."

In 1920 Congress enacted a statute giving an improved ranking to preferred mortgage liens, to make it more practical to borrow money for the purchase of vessels. The resulting rank placed them junior only to certain liens specified in 46 U.S.C. §953(a)(2), to-wit:

> "...a lien for damages arising out of tort, for wages of a stevedore when employed directly by the owner, operator, master, ship's husband, or agent of the vessel, for wages of the crew of the vessel, for general average, and for salvage, including contract salvage".

The statute thus recognizes the admiralty principle that shipowners, or mortgagees who lend money on the security of ships, can permit other persons to operate them only with the knowledge that the ship itself becomes liable as security for all forms of wages of the crew of the vessel. They must be presumed to know that their claims against the vessel, whether as owners or as mortgagees, are junior to those for the seamen's wages.

(c) Historically the maritime lien for wages is security for all of the seaman's agreed compensation for the performance of his maritime services.

The American law as to the scope of the lien for wages of the crew of the vessel has been greatly influenced by the opinion of the English High Court of Admiralty in *The Madonna D'Idra,* 1 Dods. 37, 165 Eng. Rep. 1224 (1811). This case involved a libel *in rem* litigated by the Crown on behalf of a group of Greek seamen against a Greek vessel

that had arrived in London. They had been left destitute by the misconduct and disappearance of the master and the seizing of their ship pursuant to a libel *in rem* of the vessel filed by bottomry lien creditors. The Crown claimed on behalf of the "mariners" that they had a prior lien "to defray the charges incurred for their subsistence". The Crown further claimed that the lien being enforced for the payment of bottomry bonds should be subordinate to the lien for the subsistence in the same way as it admittedly was subordinate to the lien for cash wages. The court first stated the question as follows:

> "The question is, whether he, as the agent of the bond holders, has a right to retain this money as against these mariners, or against the Crown, which stands in their place".
> (1 Dods. 37, 40, 165 Eng. Rep. 1224, 1225)

The court then posed a question as to whether the subsistence provided these mariners is to be considered as "part of their wages" protected by the lien. The court answered, after reviewing the facts before it:

> "I think it is so to be considered; it is wages paid in another form, it is part of the compensation for their labour; and, according to the law of the country to which these men belong, subsistence in the intermediate times must be presumed to form part of the contract for the payment of wages".
> (1 Dods. 37, 40, 165 Eng. Rep. 1224, 1225)

The court, upon finding the mariners' subsistence after sale of their vessel was "due to them by the universal usage and custom of their country or as forming part of the contract under which they sailed", enforced the lien for wages of the seamen. The court held that the proceeds of the sale of the vessel were "answerable for the subsistence as well as the wages of these mariners" (1 Dods. 37, 41, 165 Eng. Rep.

1224, 1226). It then ordered that the Crown, having furnished these seamen with the means of subsistence and having afterwards sent them to their own country, should recover "the charges incurred".

This opinion was quoted at length, and greatly relied upon by Mr. Justice Story in his opinion in *Harden v. Gordon,* 2 Mason 541, 11 Fed. Cas. 480 (Case No. 6,047, Circuit Court, Me. 1823), supra. This latter case, in turn, has been consistently cited in the admiralty decisions of the courts of the United States, from the district court level to the Supreme Court level. The basic principle there set down as to the lien for wages of the crew of the vessel remains the law today.

Over the past 150 years, the security of the lien for wages of the vessel's crew has been consistently enforced to require payment of a wide variety of forms of compensation other than the base wages set forth in the articles. In *The Herbert L. Rawding,* 55 F. Supp. 156 (E.D. So. Car. 1944), the lien was held to secure wages for extra hazardous service. The lien secures payment of maintenance to an injured seaman. *The Bouker No. 2,* 241 Fed. 831 (2 Cir. 1917). The share of the catch of seamen on a fishing vessel is secured by this lien. *The Georgiana,* 245 Fed. 321 (1 Cir. 1917). The lien for wages of the crew of the vessel secures payment of war bonuses not specified in the shipping articles. *Lakos v. Saliaris,* 116 F.2d 440 (4 Cir. 1940). *Glandzis v. Callinicos,* 140 F.2d 111 (2 Cir. 1944). The lien is security to collect wages for the agreed voyage when it is broken or abandoned. An admiralty proceeding *in rem* lies to enforce this lien to obtain from the vessel, or a fund representing the proceeds from the disposition of the vessel, the

compensation payable where she is idle due to no fault of the seamen. *Sheppard v. Taylor,* 5 Pet. 675 (30 U.S. 1831); *The Alanson Sumner,* 28 Fed. 670 (N.D.N.Y. 1886); *The William Leishear,* 21 F.2d 862 (D. Md. 1927); *Slavin v. Port Service Corporation,* 138 F.2d 386 (3 Cir. 1943). The lien secures the payment of agreed deferred compensation in the form of severance or discharge benefits. *Gayner v. The New Orleans,* 54 F. Supp. 25 (N.D. Cal. 1944).

The lien also extends, as the High Court of Admiralty pointed out in *The Madonna D'Idra* quoted supra, to wage obligations that are required by well established law. The courts have held that it is security for the statutory penalty of double pay for delayed payment of wages. *Collie v. Ferguson,* 281 U.S. 52 (1930), *The Chester,* 25 F.2d 908 (D.C. Md. 1928), *The President Arthur,* 25 F.2d 1002 (S.D. N.Y. 1926). The lien is also security for the statutory extra pay for improper discharge. *The Fort Gaines,* 18 F.2d 413 (D. Md. 1927), *The Great Canton,* 299 Fed. 953 (E.D.N.Y. 1924). It is security for the pilot's compensation under the contract that is implied by his offering to pilot a vessel into port. *Ex parte McNiel,* 13 Wall. 236 (80 U.S. 1872).

(d) The lien exists where (1) maritime services have been performed, and (2) the compensation therefor is reducible to money.

A detailed discussion of the applicable principles as to when the lien for wages of the crew of the vessel arises and what compensation is secured by this lien is set forth in the opinion of the district court in *Gayner v. The New Orleans,* 54 F. Supp. 25 (N.D. Cal. 1944). These principles establish that the performance of maritime services gives rise to the lien for the wages that are the agreed upon consideration for performing these services. They also establish that the lien exists to secure every obligation to provide compensation for such services that can be reduced to money.

(1) Performance of maritime services gives rise to the lien to secure payment of the compensation.

The New Orleans involved claims of seamen who worked on the San Francisco Bay ferryboats that subsequently went out of service following the building of the bridges. They had worked under an agreement specifying that the seamen, in consideration of continued performance of services, would be provided either dismissal compensation in cash or comparable employment. The seamen chose to take the money after they lost their jobs. The employer subsequently became unable to pay the money promised. Libels *in rem* were filed for the cash benefits. The court stated:

> "Libelants contend that the benefit compensation . . . was earned by them contemporaneously with and as a part of their regular wages, by virtue of their service to the vessel, and that thereby there arose and became affixed to the vessel the right of maritime lien." (54 F. Supp. 25, at 27)

The respondent contended that "such benefits are not in their nature such wages or compensation as entitle a seaman to a maritime lien". The court rejected this contention and enforced the lien.

The court first considered the nature of the seaman's lien. It stated that it "is a property right given by admiralty law that arises wholly and entirely as a result of services to a vessel" and that the amount earned for services rendered pursuant to a contract fixing the compensation is secured by a lien, automatically as a matter of admiralty law. The opinion continues:

> "It is too well established to require substantiation by citation, that the fullest protection to seamen for *all maritime services* has always been the policy of the Admiralty. At one time or another different types and

> kinds of seamen's labor or service have been the subject of adjudication in admiralty and always the courts have protected and enforced the seaman's lien, so long as it spells upon maritime services. It has never been the time, nature or extent of compensation which determines whether there is a lien, but always the test has been—has a maritime service been performed? *Harden v. Gordon,* 11 Fed. Cas. page 480, No. 6,047."
> (54 F. Supp. 25, at 27-28)

The court then discussed the nature of the "dismissal compensation" claimed by the seamen who had lost employment. It first referred to the general recognition of the social and economic benefits of dismissal pay "by way of compensation against the hazard of future nonemployment" and the importance thereof in society. The court considered the analogy of the cases sustaining the lien for a seaman's compensation, paid over and above regular wages, for his agreeing to sail into war zones. The opinion quotes from *Lakos v. Saliaris* (*The Leonidas*), 116 F.2d 440, 442 (4 Cir. 1940) (war bonus, supra):

> "There can be no question but that the so-called 'war bonus' was additional wages for extra-hazardous service. It was awarded as the result of a demand for increased wages, and was paid for services rendered and for nothing else."

The opinion then discusses the similarities to the situation before it, stating:

> "Just as the seaman going into the war zone earned his compensation by agreeing to and actually serving under such hazards, so here the libelants each day and month and year of service pursuant to the agreement submitted themselves to the hazard of nonemployment and thereby, from and after the date of the agreement, earned, as a part of their wages, the benefits agreed to be furnished thereby."
> (54 F. Supp. 25, at 28)

On the basis of the admiralty cases and principles discussed, the district court held that the seaman's lien did apply to secure recovery of the dismissal compensation benefits. This holding accords with the lengthy history, summarized above, of admiralty court *in rem* judgments enforcing the security of the lien for wages of all types of the crew members' compensation.

(2) So long as the compensation may be translated into money or its equivalent, the lien is effective.

Several courts, including the court below in the cases here on appeal (C.T. 537:15-539:3; 540:1-7), have considered claims that the crew members' compensation is uncertain in amount. This issue was before the Second Circuit in *The Bouker No. 2,* 241 Fed. 831 (2 Cir. 1917). The court enforced the maritime lien as security for maintenance and cure. The lien was enforced as to a period extending beyond the period of the voyage and thus after the termination of the obligation to pay base wages. That court had no difficulty with the claim of uncertainty, saying at 834-835:

> "The demand [for maintenance and cure] constitutes a lien, not for any specific sum of money, but for whatever reasonable sum may be appropriate to discharge that lien, which lien arose once and for all, and in its entirety, when the mariner became ill or wounded in the ship's service. It is nothing against a lien that it cannot be admeasured when it attaches, if suit can liquidate it; and in respect of this lien it is more accurate to regard items arising after voyage ended, not as new demands but as existing, but inchoate or unliquidated, at date of lien; i.e., of illness or wound."

In *The New Orleans* it was argued that the maritime lien did not arise because the consideration for the maritime services might have been provided in form of other employ-

ment, rather than provided in the form of cash. The court disposed of any claim of uncertainty, saying:

> "So long as the compensation may be translated into money or its equivalent, the lien is effective. Mere uncertainty or difficulty in calculation does not destroy the right. Equity will provide the means for ascertainment of amounts."
> (54 F. Supp. 25, at 28)

It was also urged that the dismissal compensation benefits might never be received. The court rejected this argument.

(e) The lien for wages of the seaman is not personal to him but may be enforced by anyone who advances his wages to him.

The admiralty law has been clear for many years that the lien for wages of the crew of the vessel does not provide security that can be enforced only by the seaman. *The Madonna D'Idra,* supra, 1 Dods. 37, 165 Eng. Rep. 1224, involved Greek seamen who were stranded in England when their ship was seized by the Admiralty Court to satisfy the bottomry lien creditors. The King's Proctor intervened "on behalf of the mariners" to recover for the Crown "the charges incurred" in providing subsistence to "these mariners" in England and in providing their repatriation to Greece. The court had no problem with the fact that the seamen had already received this "part of the compensation for their labour" and were not personally in court. It ordered that the proceeds of the ship were to be used, first, to reimburse the Crown for "the charges incurred" in providing this compensation to the Greek seamen.

The principle that he who provides the money for wages gains the security of the lien has been frequently applied in American courts. It has consistently been held that an assignee who pays the seaman his wages has the security for them. *The New Idea*, 60 Fed. 294 (S.D. Miss. 1892); *The William M. Hoag*, 69 Fed. 742 (D. Ore. 1895) where the court pointed out that assignability "enhances its value"; *The Staghound and the Gamecock*, 97 Fed. 973 (D. Ore. 1899) where the court said it would be "inequitable" to deny the lien to the assignee; *The President Arthur*, 25 F.2d 999 (S.D. N.Y. 1928).

In *Fielder v. Bay Construction Co.*, 5 F.2d 227 (5 Cir. 1925), Bay Construction Co. had advanced money on the request of the vessel's owner, to be used in paying the wages of a dredge's crew, and it was actually so used. A libel was filed and the dredge was sold; however, the purchase price was insufficient to satisfy in full the claims of all of the libelants. The court held that Bay Construction Co. "became entitled by subrogation" to the lien for the wages and had a preferred position superior to the lien of others.

Another person who had provided wages recovered in *The Bergen*, 7 F.2d 379 (S.D. Cal. 1925). Intervenor Farley claimed a lien on the basis that money had been obtained through his endorsements of notes, "which he endorsed solely upon the credit of the Steamship Bergen and solely for the purpose of paying the wages of the crew of said vessel". The money obtained was actually used to pay the

wages of this crew. The court held, "Under these circumstances, Farley is entitled to the same status and priority as any other person who advances money to pay the wages of the crew. . . . His lien takes precedence and is given priority over liens of other intervenors and libelant herein."

In *Brock v. The Southhampton,* 231 F. Supp. 280 (D. Ore. 1964), a bank had issued a letter of credit to an agent of the crew "to assure payment of crews' wages and other compensation as these obligations arose". The court found, "The letter of credit was drawn on, and wages and other compensation paid, only after they were earned." The court stated the applicable principle as follows:

> "Under the maritime theory of advances, one who pays the claim of a maritime lienor is entitled to the rights previously acquired by the lienor." (231 F. Supp. 280, at 282)

In a related case, *Brock v. The Southhampton,* 231 F. Supp. 283 (D. Ore. 1964), a similar letter of credit was issued by a bank "to compensate engineering personnel of the S.S. Southhampton". On the same basis the court enforced the lien and entered judgment for the bank.

II. The seamen employed on the libeled vessels performed maritime services under contracts specifying that their compensation was to include vacation pay, pensions, and welfare coverage. This compensation has been reduced to money; the seamen have received it.

Maritime services were performed by crew members of each of the vessels libeled. The contract of employment governing the performance of these maritime services specified that part of the consideration therefor was the provision of vacation pay, pension, and welfare benefit coverage. The compensation in each of these forms has been reduced to money. It has been received.

(a) The admitted facts are that maritime services were performed for the ships libeled and that the deferred compensation here involved is due as part of the consideration for the performance of these maritime services.

The record, as to each of the appellee vessels, is simple in its relevant facts. Maritime services were performed by seamen aboard the vessel. The agreed compensation included the many forms enumerated in the statement of facts, supra 7-9. As part of the consideration for the performance of maritime services the vessel's operator was obliged to provide vacation pay, to provide pensions and to provide welfare benefit coverage. It agreed to do so by making payments, called "contributions", into appellant trusts, which would pay the deferred compensation.

(b) These elements of deferred compensation are now normal and usual elements of the consideration agreed to be paid for the performance of maritime services.

The history of seamen's wages, like the history of wages of other segments of the economy, has shown a steady broadening of the types of compensation that make up the consideration for the performance of work. Thus, as we have pointed out at 8-9 supra, basic cash wages are supplemented by many forms of direct cash and fringe benefit compensation. Maritime collective bargaining during the past 20 years, has added vacation pay, pensions and welfare benefit coverage to the pre-existing wealth of fringe benefits included in the wages of crew members (See 9-11 supra).

Seamen have decided that they will work for less cash pay than they would have received had they not taken significant portions of their wages in the form of provision of vacation pay, pensions and welfare benefit coverage. The contracts stating the consideration for the performance of maritime services have specified the various forms of compensation to be provided. American ship operators have agreed that the wages of the crew of the vessel will be allocated in this way.

The broad extent and the importance of fringe benefits in employment relationships in this country are well known. A 1958 report of the Senate Committee on Labor and Public Welfare (Senate Report 1440, 85th Congress, 2d Session) contains the following statement:

> "In little more than a decade private employee welfare and pension plans have grown from relatively small significance to a position where approximately 84 million persons are depending in some manner upon the benefits which they promise. . . Regardless of the form they take, the employers' share of the cost of these plans or the benefits the employers provide are a form of compensation." (pp. 3, 4).

The Welfare and Pensions Plans Disclosure Act enacted August 28, 1958 (Public Law 85-836, 85th Congress; 72 Stat. 997) contains the following statements in Section 2a:

> "The Congress finds that the growth in size, scope, and number of employee welfare and pension benefit plans in recent years has been rapid and substantial; that the continued wellbeing and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and successful development of industrial relations; that they have become an important factor in commerce. . ."

With respect to a pension plan the Seventh Circuit, in *Inland Steel Co. v. National Labor Relations Board,* 170 F.2d 247, 251 (C.A. 7, 1948) quotes with approval a pertinent observation of the National Labor Relations Board:

> ". . . Realistically viewed, this type of wage enhancement or increase, no less than any other, becomes an integral part of the entire wage structure. . . ."

Congress has also realistically appraised the situation by amending the Davis-Bacon Act so that fringe benefits are now part of the wages that government contractors must

pay to equalize their wage payments with those of outside contractors for the same kind of work in the same area. 40 U.S.C. § 276a (b). Similarly, the Miller Act, 40 U.S.C. § 270b (a), dealing with sureties guaranteeing that "every person who has furnished labor" used in performing a contract with the United States shall be paid what is "justly due him", has been held to impose liability on the surety to the plans for "fringe benefit" contributions. *United States v. Carter,* 353 U.S. 210 (1957).

The maritime arm of the United States recognizes that vacations, pensions and welfare benefit coverage are integral parts of the seamen's wage structure. In its administration of the operating-differential subsidy (see 46 U.S.C. § 1173) it has issued *U.S. Dept. of Commerce Maritime Administration,* "Manual of General Procedures for Determining Operating-Differential Subsidy Rates". This controlling document states in part:

> "Wages consist of the fair and reasonable cost of payments made by the operators directly to or for the benefit of (to the extent indicated below) members of the crew complement and relief complement of subsidized vessels for services rendered and required for the efficient and economical operation of such vessels, provided that they are not recoverable from shippers, receivers or other third parties.
>
> Crew complement shall be construed to mean, in addition to the master, those officers and ratings approved by the Federal Maritime Board as being eligible for rate-making purposes. Relief complement shall be construed to mean those officers and ratings assigned to relieve in port members of the crew complement.
>
> "A. *Payments Eligible for Rate-Making and Subsidy Payment Purposes.*
>
> "1. Base Wages.
>
> "2. Overtime, including penalty time pay.

"3. Vacation pay (earned in subsidized services) including contributions to union vacation funds.
"4. Penalty cargo bonuses.
"5. Area bonuses.
"6. Non-watch pay.
"7. Tool allowances.
"8. Pension, welfare and unemployment fund contributions.
"9. Payroll taxes.
"10. Clothing allowances, as distinguished from uniform allowances.
"11. Payments to Masters and Chief Enginers for shifting ship.
"12. Passenger allowances to Stewards Department on freighters."

In short, the Maritime Administration defines seamen's "wages" as the *"cost of payments made by the* [*vessel*] *operators directly to or for the benefit of . . . members of the crew"* in many forms including (3) "contributions to union vacation funds" and (8) "pension, welfare and unemployment fund contributions".

(c) The trusts have provided the deferred compensation of the crew members.

Each of the trusts was set up for the specific purpose of being the conduit for the deferred compensation here involved. They have the purpose of providing the highest benefits for the wage dollar that the seaman has allocated to these forms of deferred compensation. They exist to handle the mechanics of getting the actual deferred wages into the pockets of the seamen so that they will receive these parts of the compensation for their maritime services. The seamen chose to set them up for this purpose. The multi-employer arrangements are in accordance with the general usage and customs of the country. These trusts effectuate the seaman's assignment of a substantial portion of his pre-tax "wage package" dollar to these forms of deferred compensation.

The trusts have provided the deferred compensation due to the crew members of appellee vessels as consideration for their maritime services. Each trust has confirmed in full the legal right of every seaman on these vessels to receive the agreed deferred compensation therefor in accordance with the terms specifying it. Thus the trusts have provided the consideration for the performance of maritime services. The seamen earned and have received from the trusts a day's credit towards their deferred compensation payments for each day that they worked. Furthermore, every amount that has been payable has been disbursed (C.T. 285:4-31). It has been stipulated that every payment will be made (C.T. 285:32-286:3; 290:14-30). The court below proceeded on this basis (C.T. 538:20-26). These appeals therefore are argued on this basis of its being an agreed fact that all of the deferred compensation earned by maritime services on appellee vessels has been provided by the trusts.

(d) The deferred compensation, for which the vessel operators have failed to provide and for which the vessels are security, has been reduced to money.

The value of each of the three types of deferred compensation has been determined in money in accordance with standard mathematical procedures. This has been done through actuarial science and studies, in accordance with the provisions of the plans (See Vessels' Ex. 2). Standard mathematical procedures for such purposes, recognized by the courts, are used. The number of days that a seaman performs the maritime services is the common denominator. The value of the deferred compensation as of the date the seaman performs his maritime services equals the cost to the employer for that day's work, as specified in the terms of the employment contract, the "contribution" due and owing. This is true whether what he receives be viewed as the immediate quantum he then receives in the form of a right to

cash later or if it be viewed as the amount of cash actually received later discounted into a value as of the date that the services are performed. The rate of the daily contribution into each plan constitutes the money value mathematically or actuarially computed, as of the day that services are performed, of the deferred compensation that the employer agrees to provide to the seamen for such services.

III. The court below accepted the legal principles set out in I and the facts set out in II but erroneously distinguished these principles.

The opinion below accepts the legal arguments we have set forth in I, 17-28 supra. It summarizes the applicable law as follows:

> "Admiralty courts have not limited the seaman's lien claim to those for ordinary wages. On the contrary, the Courts have recognized the seaman's lien claim for compensation for maritime services regardless of the form of the compensation provided only that the claim is reducible to money. See *Harden v. Gordon,* 11 Fed. Cas. 480 (No. 6047) (C.C. Me. 1823). From the earliest period of maritime commerce the test in admiralty courts for determining whether there is a seaman's wage lien has been: Has a maritime service been performed? If such service has been performed, then whatever constitutes the compensation for the service, if reducible to money, may be enforced by a maritime lien against the vessel upon which those services were performed.
>
> * * *
>
> "It is well established that an assignee (and, we assume, a trustee) of a seaman may enforce the wage lien of the assignor or beneficiary." (C.T. 535:14-26; 540:13-15)

The district court, although also agreeing that the facts are as we have summarized them in II, 28-34 supra, nevertheless concludes that this body of admiralty law is not governing, apparently on the three grounds: (a) no lien exists for that part of a seaman's compensation that is paid

to him through a trust, (b) the crew members have received their compensation, and (c) other courts have denied the lien.

(a) The lien exists for seamen's compensation payable through a trust.

The fact that the seamen chose to collect their deferred compensation through the form of trusts is seen, by the court below, as a basis for concluding that the cases enforcing the lien for wages of the crew of the vessel can be distinguished. Thus it states:

> "In each of the cases above mentioned, the compensation in question had become due to the seamen and *the only question was whether the form of the compensation was such as to bring the claim within the protection of the seaman's maritime lien.* [Emphasis added.]
>
> "In the pending case the contributions in question are due and payable, not to the seamen, but to the trustees.
>
> * * *
>
> "Those contributions are a means of financing the trust funds." (C.T. 537:2-8; 539:1-2).

In short, the court finds support for its conclusion, and for its decision, in the use of trusts to provide the compensation to the seamen and in various ordinary characteristics of multi-employer deferred compensation trusts (C.T. 537:7-540:7). These characteristics all are embraced within the following facts: (1) money is put in the trust with respect to the employment of many crew members of many vessels, at prescribed rates per day of maritime services performed, (2) money is later collected from the trust by crew members in the manner, at the time, and subject to the qualifications that are stated in the contract of employment, and (3) the mathematical relationship between the wages paid in and the wages paid out is an actuarial one. *We urge that the court's conclusions from the facts and its reasoning do not justify the decision reached below.*

In deciding the case on the hypothesis that the money paid in goes to a trust and not to the seaman directly (C.T. 537:7-8) and hence is "a means of financing the trust funds" (C.T. 539:1-2), the court below exalts form over substance.

The use of a trust does not exempt the vessel from its lien. Thus, if all the seamen beneficiaries of each trust had acted in accordance with the formalities of 46 U.S.C. § 599 to allot to that trust enough money from their cash wages to provide the deferred compensation it distributes, the vessel clearly would be security for the sums payable to the trust. Even if these allotments were the only payments made for any day of maritime services to provide this compensation and even if the seamen had chosen to use a multi-employer—multi-seaman trust to distribute their deferred compensation, the trustees acting for the seamen beneficiaries of the trust could enforce the lien for the crew members' wages. In this example we find the same characteristics of multi-employer—multi-seaman trusts as are referred to in the opinion. The lien, nevertheless, stands as security. It is therefore clear that the court below erred in concluding that these characteristics freed the vessel from liability for the deferred compensation paid through this ordinary type of conduit.[8]

The example we have given differs from the situation before this Court only in one aspect, the effective time of the allotment. In collective bargaining, the seamen allotted

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8. Other portions of the seaman's wages also flow through outside conduits and not through the seaman's hands. This is true, for example, as to taxes withheld, allotments to his dependents, and payments to meet court orders for support of his children. See 11-12 supra.

dollars in the "wage package" *before* they became subject to income and employment taxes, directing that part of this "wage package" money be diverted from possible use as immediately available cash wages and be put into deferred compensation. As we have seen, the seamen made this choice to get the most "take-home" in deferred compensation from the dollar that the seamen allocated out of their "wage package"; the trust form was used to take advantage of the tax laws and the savings arising in using group, rather than individual, plans. See 13-14, supra. Congress has found these plans to be socially advantageous. See 30-31 supra. The court, however, failed to appreciate the cogent reasons for using these trusts and found significance only in their form. For this reason, it was led into the incongruity of holding that the use of the trusts caused the forfeiture of the lien for wages of the crew of the vessel.

It also appears that the court below was bothered by the fact that it did not see the direct actuarial relationship between, on the one hand, the payment by the employer into the trust and, on the other hand, the daily accumulation of rights to get money from the trust and the payments thereof (cf. C.T. 537:7-538:30). As we have indicated above - pages 14, 33-34 - there is no real problem in translating the benefits to be received into money as of the date that the work is performed. There is a direct relationship between the obligation to pay money in and the right to take money out, which is based on the common factor of measurement by days of work, with the usual adjustments for the actuarial factors that refine this direct relationship to reflect the occurrences between the date the work is done and the date cash is collected as deferred compensation.

The various elements of the opinion below that we have discussed are gathered together in the district court's

conclusion that the trustees' claims were not of such a nature as to be secured by the maritime lien for seamen's wages (C.T. 536:30-539:7). The court below seemed to have believed that the payments into the trust are not compensation to the seaman, and that only the disbursements from the trust are of this character. But surely the money does not acquire a different character while it is held in the trust. The money is compensation from the time it is paid, in ordinary course, by the employer. The only problem is one of following the mathematics explaining the obvious relation between cash flow in and out of the trust.

The court below, in asserting that the sums sought by the libels "are owed only to the trustees - not to the seamen" (C.T. 540:20), failed to perceive the fact that the trustees were not suing for themselves, but for the seamen, the beneficiaries of the trust. The trust documents, excerpts from which are set forth in the appendix at pages 11-22, demonstrate that the trusts were set up by the seamen for their exclusive benefit. Any failure to pay money into the trust reduces the amount available to pay the seamen their deferred compensation. If all employers failed to pay, the seamen could recover their wages only from the vessels. The lien may be enforced whether one or many employers fail to pay into the trust.

(b) Payment of the agreed compensation has not extinguished the lien.

The court below also relies on the fact that the trusts actually provided the deferred compensation although the money for it may not have been received (C.T. 539:22-540:6). This fact in no way precludes the enforcement of the lien by the trustees, who are the trustees of the crew members. Rather, the fact that the seamen have received this compensation from the trusts is one basis for the right

of the trustees to enforce the lien for wages of these crew members. The trustees have provided the compensation that the employment contract states shall be provided. Having provided such compensation, they are entitled to sue for the value of it.

The court below, however, would draw the opposite conclusion from the trusts' having provided the compensation. Thus it holds that the trustees' claims should be denied on the theory they are made to protect other steamship companies against their having to pay the compensation of the crew members of the libeled vessels (C.T. 539:24-28). There is no validity in this theory. But even if there were, the lien is available to whoever provides the money that is received by the seamen as their compensation for their maritime services. This is one of its attributes making it such valuable security (See 27-28, supra.)

(c) The decision below seems to be based upon acceptance of erroneous and inapplicable precedents in the opinions of other courts.

The opinion below refers to three lines of authority. The principal support is said to be in *Brandon v. The Denton,* 302 F.2d 404, 415-416 (5 Cir. 1962) and cases based on it.[9] The opinion also relies on a Supreme Court opinion in the bankruptcy field, *United States v. Embassy Restaurant,* 359 U.S. 29 (1959). Finally, it distinguishes the decision of the United States Supreme Court in *United States v. Carter,* 353 U.S. 210 (1957).

The invalidity of the *Denton* opinion, which is the precedent principally relied on below, is patent. The fundamental basis of the *Denton* opinion is its premise that the lien for

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9. *Barnouw v. The Ozark,* 304 F.2d 717 (5 Cir. 1962); *Irving Trust Co. v. The Golden Sail,* 197 F.Supp. 777 (D. Ore. 1961).

wages of the crew of the vessel extends only to the wages specified in the shipping articles. This premise is fallacious.

This error arose, we submit, because the Fifth Circuit found its meaning for the word "wages" in numerous provisions of Chap. 18 of 46 U.S.C. Among these are provisions calling for the use of shipping articles in offshore trades and for penalties for failing to use these (46 U.S.C. §§ 563-573) provisions requiring an agreement with every seaman on coasting voyages "declaring the voyage or term of time for which such seamen shall be shipped" and penalties in regard thereto (46 U.S.C. §§ 574-578), provisions as to when wages commence, when they are terminated, time for payment, advances and allotments, and other details as to the computation and payment of cash wages (46 U.S.C. §§ 591-605), provisions as to unclaimed wages (46 U.S.C. § 628), and as to the accounting as to wages and the rules for settlement, including the payment of wages, the execution of mutual releases of all claims, and for issuance of discharges or maintenance of continuous discharge books (46 U.S.C. §§ 641-646). From these provisions, it concludes that the wages protected by the lien are those set forth in the articles. *The fallacy is that these sections have nothing to do with the lien.*

Actually, the lien for wages of the crew of the vessel was not established by statute. Although the *Denton* opinion does refer to the fact that this lien has had a long history, the language in the opinion directly implies that its availability must depend on the 1872 statute, which is the basis for the provisions in Chap. 18 of 46 U.S.C. referred to above, or else on the 1920 statute provisions now in Chap. 27 of 46 U.S.C., which gave ranking to certain ship mortgages. This position is utterly without merit. The lien is a development of the admiralty law of many nations over

many years and the lien applies to all forms of compensation; see supra 19-26. *Denton* was wrongly decided; it should not be followed.[10]

The court below also relies on the *Embassy Restaurant* case. The Supreme Court opinion makes it clear that it is based upon specific language in the bankruptcy statute. This statute, in rather sharp contrast with admiralty principles, protects wages only if due to the individual worker and only if earned within a short period prior to the bankruptcy proceeding. The inapplicability of the bankruptcy four months' period to admiralty law is apparent from the fact that a single voyage of a vessel may readily extend beyond the four-months period.[11] The bankruptcy court proceeds on a fundamental principle as to wage payments that is directly contrary to the fundamental principle of admiralty law as to wages.

Admiralty law places the liability for wages, all wage liabilities, ahead of all other claims. The fundamental purpose of the admiralty principles as to wage claims is to assure that they will all be paid and that the vessel will be security

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10. The explanation of the *Denton* decision, we believe, lies in the failure of counsel to present the admiralty law to the court. We have reviewed the briefs filed there, and find that this body of law was not presented for the consideration of the Court of Appeals. Similarly, it would appear that the Court was not advised that little of the employment contract is set forth in the shipping articles.

In the alternative, the decision in *Denton* may have been based on the unusual fact that the suit there was brought on the collective bargaining agreement, which included specific language negating the availability of an admiralty remedy. See 302 F.2d at 415.

In addition, it is noteworthy that the opinion below rejects the *Denton* reasoning, for it recognizes that the long history of admiralty wage lien cases does not permit a holding that the lien is limited to wages specified in the shipping articles.

11. The articles for the *Alaska Bear* were for a period of nine months. See Vessels Exhibit 2A.

for them before it is security for any other payments. Thus, the admiralty law as to wages is fundamentally directed at protecting in full the seaman's right to all of his compensation. The bankruptcy law, in contrast, is directed at affording relief to the individual who is in debt and at providing some reasonably fair distribution of the assets of the debtor among the various claimants to them. The concept of full payment of all wage claims, prior to any payment of any other claims, is in direct contravention to the bankruptcy law. For this reason, as well as for the reason that unique statutory language and legislative history in the Bankruptcy Act was involved in the *Embassy Restaurant* case, this opinion is of little significance in determining the admiralty law.

The opinion below also errs in distinguishing the Supreme Court holding with respect to the Miller Act in *United States v. Carter,* 353 U.S. 210 (1957). We submit this opinion is of much more relevance to admiralty law than the Bankruptcy Act opinion. The Miller Act provided that a surety on a government contract, where the statute provides that everyone who furnishes labor shall be able to sue for what is justly due to him, makes the surety liable to the deferred compensation trusts for the employer contributions due to provide the deferred compensation on public contracts. Here, as in the case of the admiralty law, the purpose is to protect the worker and to see that he shall have the benefit of all of the compensation. Here there is no limitation to the wages "due to him". The fundamental purpose of the Miller Act, like the maritime lien for wages of the crew of the vessel, is to guarantee payment of all compensation. In these circumstances, the form of payment-through trusts in which the wage money is held and earns

interest during the period between the time the work is performed and the time actual cash is drawn down - is of no consequence. We submit that the Miller Act decision relates to a problem much more like the admiralty law problem than a bankruptcy problem and for this reason should have been followed and the *Embassy Restaurant* holding distinguished in determining the availability of the maritime lien for the wages of the crew of the vessel.

CONCLUSION

The admiralty courts have enforced the lien for wages of members of the crew where there have been no articles signed by anyone, where the obligation to pay a particular item of compensation is shown by well-established custom, where the obligation is set forth in a statute, where it is implied from a statute, where the obligation is set forth in collective bargaining agreements, where it is stated in the articles, or where in any other way it is determined that the compensation is a material element of the compensation for maritime services. The lien has extended to all items of compensation, in whatever manner or form the compensation is to be paid, if it can be reduced to money. This is true even if it is inchoate or unliquidated at the time the services are performed, provided it can be liquidated by suit. It is available not only to the seamen, but to whoever provides the compensation to the seaman. The purpose of the maritime lien for wages of the crew of the vessel is to assure that the vessel shall be responsible for all payment of compensation to all seamen. Unless the body of admiralty law - developed over many decades - is now to be over-ruled, the

decision below must be reversed with directions that judgments be entered enforcing the lien against the vessels and so requiring payment to the trusts of the sums prayed for in the libels.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

RICHARD ERNST

(Appendix Follows)

Appendix

165 English Reprint 1224

THE "MADONNA D'IDRA"

1 Dodson's English Admiralty Reports 37

[37] "Madonna D'Idra"—(Papaghica). [High Court of Admiralty] April 30, 1811.—Mariners wages take precedence of bottomry bonds—Subsistence part of wages—In cases of Greek navigation mariners to be subsisted till conveyed back to their own country.

This was the case of a Greek vessel, which brought a cargo of cotton, wool, and fruit, from Smyrna to London, where she arrived in February 1810, and discharged her lading. In the month of May, in the same year, a warrant was issued to arrest the ship, at the suit of Mr. Hansen, of London, the holder of two bottomry bonds. A memorial having been presented to the Earl of Liverpool, one of the Secretaries of State, by twenty-five of the mariners, part of the crew of this ship, stating that they had been defrauded of their wages by the captain, and were left destitute of support, the King's Proctor received directions from the Secretary of State's office to take such steps as might be requisite to recover the wages due to the memorialists who were, in the meantime, furnished with the means of subsistence, and afterwards sent to their own country by His Majesty's Government. In consequence of the directions thus received, the King's Proctor intervened in the cause on behalf of the mariners. Mr. Hansen, the holder of the bonds, and consignee of the cargo, consented to pay the wages due to these men, but declined to defray the charges incurred for their subsistence. The ship was sold under a decree of the Court, and the proceeds brought into the registry, but the amount was not sufficient to satisfy the demands of the mariners and of the bond holder.

On behalf of the mariners it was contended, that they were entitled to priority of payment, and that the [38] money expended for their maintenance ought to be defrayed out of the proceeds of the ship in the first instance; and if that should prove insufficient, then out of the freight which was in the hands of Mr. Hansen.

On the other side it was submitted that the proceeds of the ship ought to be applied in payment of the bottomry bonds, in preference to all other demands, the wages having already been paid.

Judgment—Sir. W. Scott: This is one of those cases which are almost unavoidably involved in considerable mystery, and attended with great confusion and embarrassment upon the question of law arising on the facts, taking them to be ascertained; for it is a question of Greek navigation, which must depend in a great degree upon the customs and regulations of a foreign country, the exact state of which it is extremely difficult to ascertain. I may add, likewise, that it is a case in which the Court finds it by no means an easy task to obtain a correct and satisfactory statement of facts.

It appears that the ship sailed from Smyrna, at which place the master had taken up money on a bottomry bond; that in the course of her voyage she had put into Malta, where the master again procured money by means of another bond; and that she had since arrived in the port of London. What may be the original ground of dispute between the master and the crew *non constat.* No reason has been assigned for the quarrel, so that I am totally at a loss to discover what has led to it. The Court cannot find out which of the parties is the wrong-doer; whether there is a cause of

forfeiture of wages on the part of the mariners, or [39] whether the misconduct of the master should entail any inconvenience on his owners.

It appears, that after the arrival of the ship in this country, Mr. Hansen, of this town, with perfect propriety, took out a warrant to arrest this ship, in order to obtain payment upon the bottomry bonds; and that a quarrel arose between the master and crew, which led to the probability that the ship might be left here in a state of distress. The ship has since been sold, under the directions of this Court, and the proceeds of the sale have been brought into the registry. In the meantime the sailors applied and proceeded for their wages in the courts of common law, in twenty-five separate actions; I do not say in an oppressive manner, for it was the only way in which they could there proceed: it is only in this Court that the mariners can combine their actions. The crew afterwards intervene in the suit carried on by Mr. Hansen in the Court of Admiralty, not exactly in the regular manner; but the Court does not expect it of such men, who are in an eminent degree *inopes consilii.* The Court would to such suitors give every relief in its power, by departing from forms, as far as is consistent with the justice due to others, especially where the Crown has intervened for the protection of the parties.

Mr. Hansen has, by his act in paying the wages schedulate, waived all objection to the informality of the proceedings; and the question now is, whether the money remaining in his hands shall be answerable for the subsistence of these mariners, or whether the Crown shall be left loaded with the support of them. Mr. Hansen has in his possession, and will retain, a larger sum than will be sufficient to satisfy any demands of his own: he will, at all events, suffer no derogation [40] of his own rights, and is concerned only on behalf of his employers, the holders of these bottomry bonds. The question is, whether he, as the agent of the bondholders, has a right to retain this money as against these mariners, or against the Crown, which stands in their place. Now, it

must be taken as the universal law of this Court, that mariners' wages take precedence of bottomry bonds. These are sacred liens, and, as long as a plank remains, the sailor is entitled, against all other persons, to the proceeds as a security for his wages. This is a principle universally admitted; and whoever enters into a contract, or advances money upon bottomry, must be presumed to do it with a full knowledge of the law upon this point. But, then, is the subsistence of these men to be considered as part of their wages? I think it is so to be considered; it is wages paid in another form, it is part of the compensation for their labour; and, according to the law of the country to which these men belong, subsistence in the intermediate time must be presumed to form part of the contract for the payment of wages. The parties must be subsisted till the return to their own country, unless some special reason is shewn to the contrary, such as desertion, or any kind of misconduct, which would work a forfeiture of wages. There is, indeed, no proof of any special agreement upon this point in the present case; but it is very material that such a covenant should be presumed to subsist between the parties, especially in a case like the present, of Greek navigation. The number of Greek vessels which arrive in this country is very small; and the mariners, from the peculiarity of their language and habits, if discharged in England, could not, without extreme difficulty, find an opportunity of returning to their own [41] country. But the Court is not left solely to its own conjectures, as to what may be the established usage with respect to the subsistence or the dismissal of mariners employed in the navigation of Greek vessels. It is sworn by a person who states himself to have been for twenty years captain of an Ottoman vessel, and at present the consul-general of the Sublime Porte resident in Great Britain, that

"the captain is bound by the customary regulations of Turkey to take his men back again in his vessel, or to find them conveyance in other vessels; and that in case of sale of the vessel in this country, the proceeds thereof are liable for the support of the crew, and to procure them the means of conveyance to their own country." This, I think, effectually distinguishes the present case from the American cases which were lately before the Court. The American seamen did not there attempt to establish their right, as due to them by the universal usage and custom of their country, or as forming part of the contract under which they sailed, but upon the ground of a statute lately introduced. As the demand was made upon a mere legislative act of that country, the Court declined to interfere, but it held there, that if the subject-matter in dispute between the parties had formed

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part of the contract, it would have upheld the demand. I shall, therefore, consider the proceeds as answerable for the subsistence as well as the wages of these mariners; but I shall not meddle with the freight which is in Mr. Hansen's hands.

MANUAL OF GENERAL PROCEDURES FOR DETERMINING OPERATING-DIFFERENTIAL SUBSIDY RATES

First Revised Issue

Provisions of this Manual Approved by the Federal Maritime Board and Maritime Administrator on November 25, 1957
Issued Under Authority of Management Order No. 630

Federal Maritime Board—U. S. Department of Commerce—Maritime Administration

[49]

PART SEVEN

Definitions of Subsidizable Items of Expense

Section 1—Wages of Officers and Crews

Wages consist of the fair and reasonable cost of payments made by the operators directly to or for the benefit of (to the extent indicated below) members of the crew complement and relief complement of subsidized vessels for services rendered and required for the efficient and economical operation of such vessels, provided that they are not recoverable from shippers, receivers or other third parties.

Crew complement shall be construed to mean, in addition to the master, those officers and ratings approved by the Federal Maritime Board as being eligible for rate-making purposes. Relief complement shall be construed to mean those officers and ratings assigned to relieve in port members of the crew complement.

A. Payments Eligible for Rate-Making and Subsidy Payment Purposes

1. Base Wages.
2. Overtime, including penalty time pay.
3. Vacation pay (earned in subsidized services) including contributions to union vacation funds.
4. Penalty cargo bonuses.
5. Area bonuses.
6. Non-watch pay.
7. Tool allowances.
8. Pension, welfare and unemployment fund contributions.
9. Payroll taxes.
10. Clothing allowances, as distinguished from uniform allowances.
11. Payments to Masters and Chief Engineers for shifting ship.
12. Passenger allowances to Stewards Department on freighters.

B. Payments Eligible for Subsidy Payment Purposes Only

1. Travel expenses (except subsistence allowances) representing the cost of crew replacements or returning crew to port at which articles are signed.
2. Relief officers and ratings to the extent of items set forth under A above.

C. Payments Ineligible for Rate-Making and Subsidy Payment Purposes

1. Uniform allowances, as distinguished from clothing allowances.
2. Unclaimed wages (ineligible for subsidy payment purposes only).

[50]

3. Commissions on sale of liquors (bar bonuses).
4. Gratuities or gifts.
5. Payments (such as 50¢ per meal) and overtime to Stewards Department personnel for serving meals to other than crew and relief complement, passengers and persons necessary to the efficient and economical

operation of the vessel, i.e., pilots, immigration, customs officials, etc., actually working the vessel.

6. Payments of any kind to crew or relief complement who are represented in union collective bargaining agreements which are in excess, either in nature or amount, of that specified and required in such agreements shall not be allowed, unless specifically authorized by the Federal Maritime Board.

7. Payments of any kind to crew or relief complement who are not represented in union collective bargaining agreements which are in excess, either in nature or amount of that specified for like personnel in comparable agreements, shall not be allowed, unless specifically authorized by the Federal Maritime Board.

8. Payroll taxes (except on unclaimed wages) related to any payments disallowed under the definitions hereinabove stated.

Section II—Subsistence of Officers and Crews

Subsistence consists of the fair and reasonable net costs of meals and meal allowances furnished to crew and relief complements as defined under wages of officers and crews.

The definition of the word "domestic" as used herein shall refer to the "United States" as defined in Section 505(a) of the Merchant Marine Act, 1936, as amended.

A. Costs Eligible for Rate-Making and Subsidy Payment Purposes

1. Net costs of food and other edibles consumed are eligible for rate-making; however, that portion of purchases other than domestic which is included therein is ineligible for subsidy payment purposes.

2. Sales taxes.

3. Government inspection.

4. Shipside delivery costs except those incurred by crew and relief complement.

B. Costs Eligible for Subsidy Payment Purposes Only

1. Subsistence allowance for meals ashore when it is impracticable to serve meals aboard the vessel.
2. Subsistence allowances which are directly attributable to crew replacements or returning crew to port at which articles were signed.
3. Loading costs (domestic) when loading is performed by other than crew and relief complement.

[51]

C. Costs Ineligible for Rate-Making and Subsidy Payment Purposes

1. Room or lodging allowances.
2. Subsistence allowances as indicated in B-1 and B-2 above, which are in excess of amounts stipulated in collective bargaining agreements.
3. Bar and slop chest supplies, fuel and water.
4. Storeroom handling charges.
5. Purchases, other than domestic (ineligible for subsidy payment purposes only).
6. Loading costs (other than domestic) when loading is performed by other than crew and relief complement.

Section III—Hull and Machinery Insurance

The fair and reasonable costs of Hull and Machinery, Increased Value, Excess General Average, Salvage and Collision Liability insurance, excluding war risk insurance, against risks and liabilities covered under the terms and conditions of policies approved as to form and coverage by the Maritime Administration, shall be eligible for subsidy at the applicable Hull and Machinery Insurance subsidy rate.

Approval as to form and coverage of such insurance shall be determined by the Office of the Comptroller in accordance with the definition set forth above and subject

to such limitations as may be prescribed by the Federal Maritime Board/Maritime Administrator.

A. Costs Eligible for Rate-Making and Subsidy Payment Purposes

1. Net premium costs after brokerage and owners' adjustments.
2. Foreign stamp taxes.

B. Costs Ineligible for Rate-Making and Subsidy Payment Purposes

1. War risk insurance premiums and related costs.
2. Shore risk premiums.
3. Premiums on insurance of premiums.

Section IV—Protection and Indemnity Insurance Premiums

The fair and reasonable costs of Protection and Indemnity and Second Seamen's insurance, excluding war risk insurance, against liabilities covered under the terms and conditions of policies approved as to form and coverage by the Maritime Administration shall be eligible for subsidy at the applicable Protection and Indemnity insurance premium subsidy rate.

Approval as to form and coverage of such insurance shall be determined by the Office of the Comptroller in accordance with the definition set forth above and subject to such limitations as may be prescribed by the Federal Maritime Board/Maritime Administrator.

EXCERPTS FROM VESSELS' EXHIBIT 2

MMP-PMA Vacation Plan Agreement

* * *

MM&P, through collective bargaining negotiations, has reached agreement with PMA, which provides in general terms for establishment of a pooled vacation plan for the benefit of Licensed Deck Officers employed in work covered by said agreement.

* * *

X. Liability for Contributions

Neither PMA nor any Contributing Employer shall be liable to MM&P or to the Trustees or to anyone else for contributions due from any other Contributing Employer, except that PMA shall be obliged to transmit to the Trustees any contributions received by it, and to take all reasonable steps necessary in the endeavor to compel its members who are Contributing Employers to comply with the obligations hereunder.

* * *

MM&P-PMA Vacation Plan—Declaration of Trust

The undersigned [trustees] . . . do hereby declare this to be an irrevocable trust, subject to all the terms and provisions of said Vacation Plan Agreement, for the sole and exclusive benefit of eligible Licensed Deck Officers. . . .

* * *

MMP-PMA Pension Agreement

* * *

Article X. Liability for Contributions.

Neither the Association nor any Contributing Employer shall be liable to any licensed deck officer or to the Trustees

or to anyone else for contributions due from any other Contributing Employer, except that the Association shall be obliged to transmit to the Trustees any contributions received by it.

Article XI. Rights in Fund

. . . The Pension Fund shall constitute an irrevocable trust having the sole and exclusive obligation and purpose of providing pensions to licensed deck officers within the unit; no portion of any contribution paid into the trust may revert to any employer, and all contributions shall be used solely to provide such pensions.

* * *

MMP-PMA Pension Plan—Declaration of Trust

* * *

Article II. Trust Fund

Section 1. There is hereby created the MMP-PMA Pension Trust, an irrevocable trust, for the sole and exclusive benefit of covered employes. . . . No part of this trust shall be used for or diverted to purposes other than to provide pensions for the exclusive benefit of covered employes and their beneficiaries, by amendment or otherwise.

* * *

MMP-PMA Welfare Plan Agreement

* * *

§ 2. Contributions.

On and after January 1, 1950, the following contributions shall be paid to . . . the MMP-PMA Welfare Fund . . . by Employers in respect of work performed under the said agreement of December 9, 1949, for the sole purpose of providing for the payment of life, sick, accident or other benefits to members or their dependents within the mean-

ing of these terms as used in Section 501(c) of the Internal Revenue Code of 1954, and to meet expenses of the Fund: . . .

* * *

§ 9. Collection of Unpaid Contributions.

* * *

(b) Neither the Association nor any member of the Association nor any Contributing Employer shall be liable to the Union or to the Trustees or to the Fund or to anyone else for contributions or any other payments due from any other Employer or Contributing Employer, except that the Association shall be obliged to transmit to the Trustees any contributions received by it, and to take all reasonable steps necessary in the endeavor to compel its members who are Contributing Employers to comply with the obligations hereunder.

* * *

MEBA-PMA Vacation Plan Agreement

* * *

MEBA, through collective bargaining negotiations, has reached agreement with PMA, which provides in general terms for establishment of a pooled vacation plan for the benefit of Licensed Engineers employed in work covered by said Agreement.

* * *

X. Liability for Contributions

Neither PMA nor any Contributing Employer shall be liable to MEBA or to the Trustees or to anyone else for contributions due from any other Contributing Employer, except that PMA shall be obliged to transmit to the Trustees any contributions received by it, and to take all reasonable steps necessary in the endeavor to compel its members

who are Contributing Employers to comply with the obligations hereunder.

* * *

MEBA-PMA Vacation Plan—Declaration of Trust

The undersigned [trustees] . . . do hereby declare this to be an irrevocable trust, subject to all the terms and provisions of said Vacation Plan Agreement, for the sole and exclusive benefit of eligible licensed engineers. . . .

* * *

MEBA-PMA Pension Agreement

* * *

Article X. Liability for Contributions

Neither the Association nor any Contributing Employer shall be liable to any licensed engineer or to the Trustees or to anyone else for contributions due from any other Contributing Employer, except that the Association shall be obliged to transmit to the Trustees any contributions received by it.

Article XI. Rights in Fund

. . . The Pension Fund shall constitute an irrevocable trust having the sole and exclusive obligation and purpose of providing pensions to licensed engineers within the unit. . . .

* * *

MEBA-PMA Pension Plan—Declaration of Trust

Article II. Trust Fund

Section 1. There is hereby created the MEBA-PMA Pension Trust, an irrevocable trust, for the sole and exclusive benefit of covered employes. The trust may provide benefits through contracts with or policies issued by a licensed insurance carrier or may otherwise fund and pay pensions. Said Fund shall consist of all payments required to be made into this Trust and all interest, income and other

returns thereon of any kind whatsoever. No part of this trust shall be used for or diverted to purposes other than to provide pensions for the exclusive benefit of covered employes and their beneficiaries, by amendment or otherwise.

* * *

MEBA-PMA Welfare Plan Agreement

* * *

2. *Contributions.* On and after January 1, 1950, the following contributions shall be paid to . . . the MEBA-PMA Welfare Fund . . . for the sole purpose of providing for the payment of life, sick, accident or other benefits to members or their dependents within the meaning of these terms as used in Section 501(c) of the Internal Revenue Code of 1954, and to meet expenses of the Fund.

* * *

(a) . . . (1) . . . The term "welfare contributions" . . . means amounts collected from members and amounts contributed to their welfare plan by the employers of members for the sole purpose of providing for the payment of life, sick, accident or other benefits to members or their dependents.

* * *

ARA-PMA Vacation Plan Agreement

* * *

ARA, through collective bargaining negotiations, has reached agreement with PMA, which provides in general terms for establishment of a pooled vacation plan for the benefit of Radio Officers employed in work covered by said Agreement.

* * *

X. Liability for Contributions

Neither PMA nor any Contributing Employer shall be liable to ARA or to the Trustees or to anyone else for con-

tributions due from any other Contributing Employer, except that PMA shall be obliged to transmit to the Trustees any contributions received by it, and to take all reasonable steps necessary in the endeavor to compel its members who are Contributing Employers to comply with the obligations hereunder.

* * *

ARA-PMA Vacation Plan—Declaration of Trust

The undersigned [trustees] . . . do hereby declare this to be an irrevocable trust, subject to all the terms and provisions of said Vacation Plan Agreement, for the sole and exclusive benefit of eligible radio officers. . . .

* * *

ARA-PMA Pension Agreement

Whereas, the parties have agreed to establish a pension plan in accordance with applicable federal and state legislation to provide pension benefits to retired Licensed Radio Officers.

* * *

Article IX. Liability for Contributions

All the contributions hereunder received by the Association shall be received and held in trust. Neither the Association nor any Contributing Employer shall be liable to any Licensed Radio Officer or to the Trustees or to anyone else for contributions due from any other Contributing Employer, except that the Association shall be responsible for, and obliged to transmit to the Trustees any contributions received by it.

* * *

ARA-PMA Pension Plan—Declaration of Trust.

* * *

Article II. Trust Fund

Section 1. There is hereby created the ARA-PMA Pension Trust, an irrevocable trust, for the sole and exclusive benefit of covered employes. . . . No part of this trust shall be used for or diverted to purposes other than to provide pensions for the exclusive benefit of covered employes and their beneficiaries, by amendment or otherwise.

* * *

Article IX

* * *

(b) It is understood and agreed that no part of the trust corpus or income may be used for or diverted to purposes other than for the exclusive benefit of Licensed Radio Officers who are Covered Employees, either by operation or natural termination of this trust, by any power of revocation or amendment, by the happening of any contingency, by collateral arrangement, or by any other means.

* * *

ARA-PMA Welfare Plan Revised Agreement

* * *

2. *Contributions.* On and after January 1, 1950 contributions shall be paid to . . . the ARA-PMA Welfare Fund . . . for the sole purpose of providing for the payment of life, sick, accident or other benefits to members or their dependents within the meaning of these terms as used in Section 501(c) of the Internal Revenue Code of 1954, and to meet expenses of the Fund—by Employers in respect of work performed under the said basic Agreement, as follows:

* * *

... The term "welfare contributions" ... means amounts contributed to the welfare plan by the employers of members for the sole purpose of providing for the payment of life, sick, accident or other benefits to members or their dependents, ...

ARA-PMA Welfare Plan Revised Declaration of Trust

Whereas, the ARA-PMA Welfare Plan Agreement provides for payments to be made by the employers to Trustees to be held in trust for the purpose of establishing and maintaining a welfare Trust Fund to provide welfare benefits for employes specified therein and their families and dependents, and said agreement further provides that the Fund shall be jointly administered by Trustees designated by the Union and by the Association so that employers and ...

* * *

SIU-PD-PMA Pension Plan Agreement

* * *

X. Liability for Contributions

Neither the Association nor any Contributing Employer shall be liable to any seaman or to the Trustees or to anyone else for contributions due from any other Contributing Employer, except that the Association shall be obliged to transmit to the Trustees any contributions received by it.

XI. Rights in Fund

... The Pension Fund shall constitute an irrevocable trust having the sole and exclusive obligation and purpose of providing pensions to seamen as defined in this agreement; no portion of any contribution paid into the trust may revert to any employer, and all contributions shall be used solely to provide such pensions.

* * *

SIU Pacific District-PMA Pension Plan—
Declaration of Trust

The undersigned [trustees] . . . do hereby declare this to be an irrevocable trust, subject to all the terms and provisions of said pension plan agreement, for the sole and exclusive benefit of eligible seamen. . . .

* * *

9. Termination.

* * *

(b) It is understood and agreed that no part of the trust corpus or income may be used for or diverted to purposes other than for the exclusive benefit of seamen who are covered employes, either by operation or natural termination of this trust, by any power of revocation or amendment, by the happening of any contingency, by collateral arrangement, or by any other means.

* * *

MSO-PMA Welfare Plan Agreement

* * *

§2. Contributions.

. . .[T]he following contributions shall be paid to . . . the MSO-PMA Welfare Fund . . . by Employers for the sole purpose of providing for the payment of life, sick, accident or other benefits to members or their dependents within the meaning of these terms as used in Section 501(c) of the Internal Revenue Code of 1954, and to meet expenses of the Fund.

* * *

§ 9. Collection of unpaid contributions.

* * *

(b) Neither the Association nor any member of the Association nor any Contributing Employer shall be liable to the Union or to the Trustees or to the Fund or to anyone else for contributions or any other payments due from any other Employer or Contributing Employer, except that the Association shall be obligated to transmit to the Trustees any contributions received by it, and to take all reasonable steps necessary in the endeavor to compel its members who are Contributing Employers to comply with the obligations hereunder.

* * *

SUP-PMA Welfare Plan Agreement

* * *

V. Benefits

All assets . . . shall be held by it . . . in trust to provide such health or welfare benefits as the Trustees may from time to time determine. . . .

* * *

XI. Liability for Contributions

. . . Neither PMA nor any Contributing Employer shall be liable to SUP or to the Trustee or to anyone else for contributions due from any other Contributing Employer, except that PMA shall be obliged to transmit to the Trustee any contributions received by it.

* * *

MFOW-PMA Welfare Plan Agreement

* * *

§ 3. Contributions.

* * *

(c) The contributions specified in (a) and (b) above . . . are to be utilized for the sole purpose of providing for the

payment of life, sick, accident, or other benefits to employes covered by the plan or their dependents. . . .

* * *

§ 9. Collection of Unpaid Contributions.

* * *

. . . (b) Neither the Association nor any member of the Association nor any Contributing Employer shall be liable to the Union or to the Trustees or the Fund or to anyone else for contributions or any other payments due from any other Employer or Contributing Employer, except that the Association shall be obliged to transmit to the Trustees any contributions received by it, and to take all reasonable steps necessary in the endeavor to compel its members who are Contributing Employers to comply with the obligations hereunder.

* * *

MCS-AFL-PMA Welfare Plan Agreement

* * *

Whereas, the Union and the Association and the employers desire to amend the existing Welfare Plan and to maintain a lawful jointly administered Welfare Plan for the stewards department employees within the collective bargaining unit.

* * *

X. Liability for Contributions

Neither the Association nor any member of the Association nor any Contributing Employer shall be liable to the Union or to the Trustee or the Fund or to anyone else for contributions or any other payments due from any other Employer or Contributing Employer, except that the Association shall be obliged to transmit to the Trustee any contributions received by it, and to take all reasonable steps

necessary in the endeavor to compel its members who are Contributing Employers to comply with the obligations hereunder.

* * *

SIU Pacific District-PMA Supplemental Benefits Agreement

* * *

The parties recognize and agree that eligible seamen work for many different employers over a period of time. The parties have, therefore, agreed to establish a Supplemental Benefits Fund which will make available to eligible seamen payments in lieu of vacation.

* * *

III. Contributions to Supplemental Benefits Fund

* * *

(b) . . . If a Contributing Employer is delinquent or defaults in payment of contributions, the lien against the ship for seamen's wages shall be available to the Trustee. . . .

(c) It is intended that the contributions shall be based on the amount necessary to operate the plan properly and to provide the payments agreed upon without the establishment of any reserve except that reasonably necessary for obligated or prospective payments and liabilities, contingent or otherwise. . . .

* * *

X. Liability for Contributions

Neither the Association nor any Contributing Employer shall be liable to the Union or to the Trustee or to anyone else for contributions due from any other Contributing Employer, except that the Association shall be obligated to transmit to the Trustee any contributions received by it, and to take all reasonable steps necessary in the endeavor to compel its members who are Contributing Employers to comply with the obligations hereunder.

* * *